

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Gilad Israel Elbaz et al.	Art Unit :	2129
Patent No. :	7,925,610	Examiner :	Peter D. Coughlan
Issue Date :	April 12, 2011	Conf. No. :	2189
Serial No. :	10/690,328		
Filed :	October 21, 2003		
Title :	DETERMINING A MEANING OF A KNOWLEDGE ITEM USING DOCUMENT BASED INFORMATION.		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Patentees hereby request reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 292 days to 399 days is respectfully requested.

“A Delays” are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt PTO response. “B Delays” are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. Patentees respectfully submit that the Office did not apply the proper standard for determining the period of “B Delay” under 35 U.S.C. § 154(b)(1)(B).

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

Applicant Delay

A reply to a Notice to File Missing Parts was due on or before April 28, 2004 (the date that is three months after January 28, 2004, the date on which the Notice to File Missing Parts was mailed). Patentees filed a response to the Notice to File Missing Parts on July 26, 2004, thereby according an Applicant Delay of 89 days. Patentees do not dispute the PTO’s calculation for this Applicant Delay from April 29, 2004 (the day after the date that is three months after the date on which the Notice to File Missing Parts was mailed), to July 26, 2004. See 37 C.F.R. § 1.704(b).

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: June 13, 2011.

Patentees filed an Information Disclosure Statement on September 11, 2006, subsequent to a reply filed on August 25, 2006. Patentees were accorded a delay of 17 days for a supplemental response. Patentees do not dispute the PTO's calculation for this Applicant Delay from August 26, 2006, to September 11, 2006. See 37 C.F.R. § 1.704(c)(8).

A reply to an Office Action was due on or before January 23, 2007 (the date that is three months after October 23, 2006, the date on which the Office Action was mailed). Patentees filed a response to the Office Action on April 23, 2007, thereby according an Applicant Delay of 90 days. Patentees do not dispute the PTO's calculation for this Applicant Delay from January 24, 2007 (the day after the date that is three months after the date on which the Office Action was mailed), to April 23, 2007. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before October 12, 2007 (the date that is three months after July 12, 2007, the date on which the Office Action was mailed). Patentees filed a response to the Office Action on November 12, 2007, thereby according an Applicant Delay of 31 days. Patentees do not dispute the PTO's calculation for this Applicant Delay from October 13, 2007 (the day after the date that is three months after the date on which the Office Action was mailed), to November 12, 2007. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before April 17, 2008 (the date that is three months after January 17, 2008, the date on which the Office Action was mailed). Patentees filed a response to the Office Action on June 17, 2008, thereby according an Applicant Delay of 61 days. Patentees do not dispute the PTO's calculation for this Applicant Delay from April 18, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to June 17, 2008. See 37 C.F.R. § 1.704(b).

A reply to an Office Action was due on or before December 29, 2008 (the date that is three months after September 29, 2008, the date on which the Office Action was mailed). Patentees filed a response to the Office Action on January 29, 2009, thereby according an Applicant Delay of 31 days. Patentees do not dispute the PTO's calculation for this Applicant Delay from December 30, 2008 (the day after the date that is three months after the date on which the Office Action was mailed), to January 29, 2009. See 37 C.F.R. § 1.704(b).

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Patentees filed an Information Disclosure Statement on May 3, 2010, subsequent to a reply filed on April 13, 2010. Patentees were accorded 0 days delay for a supplemental response. In good faith and candor, Patentees submit that the supplemental response should have been accorded a total Applicant Delay of 20 days for delay from April 13, 2010, to May 3, 2010. See 37 C.F.R. § 1.704(c)(8).

A reply to an Office Action was due on or before August 18, 2010 (the date that is three months after May 18, 2010, the date on which the Office Action was mailed). Patentees filed a response to the Office Action on November 18, 2010, thereby according an Applicant Delay of 92 days. Patentees do not dispute the PTO's calculation for this Applicant Delay from August 19, 2010 (the day after the date that is three months after the date on which the Office Action was mailed), to November 18, 2010. See 37 C.F.R. § 1.704(b).

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this patent should be calculated as 431 days (i.e., the sum of 89 days, 17 days, 90 days, 31 days, 61 days, 31 days, 20 days, and 92 days).

"A Delay"

A first PTO action was due on or before December 21, 2004 (the date that is fourteen months after October 21, 2003, the date on which the application was filed). The PTO mailed the first non-final Office Action on May 25, 2006, thereby according a PTO Delay of 520 days. Patentees do not dispute the PTO's calculation for this "A Delay" from December 22, 2004 (the day after the date that is fourteen months after the date on which the application was filed), to May 25, 2006. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

In view of the period of "A Delay" detailed above, the total "A Delay" for this patent should be calculated as 520 days.

"B Delay"

There is no dispute that the Office failed to issue a patent within three years of the filing date of the application and that Patentees are entitled to "B Delay" to compensate for that Office delay. The only issue in contention is the correct length of the "B Delay" period.

The period beginning on October 22, 2006 (the day after the date that is three years after the date on which the application was filed), and ending April 12, 2011 (the date the patent was issued), is 1,634 days in length. The "PTA 36 Months" entry in the PAIR/PALM system indicates that a total of 183 days were awarded for "B Delay" for this patent. Patentees respectfully submit that the PTO's calculation of this "B Delay" is incorrect.

Section 154(b)(1)(B)(i) of Title 35 excludes from the calculation of B Delay "any time consumed by continued examination of the application." In the present matter, Requests for Continued Examination were filed on April 23, 2007, April 29, 2009, and April 13, 2010. The Director erred in the calculation of patent term adjustment by subtracting from B Delay a period of time that was not "consumed by continued examination of the application." The PTO mailed a Notice of Allowance on December 7, 2010, thereby closing examination of the application on that date. Thus, no continued examination took place during the 127 day period from December 7, 2010 (the mailing date of the Notice of Allowance), until April 12, 2011 (the date the patent was issued). Accordingly, 127 days of B Delay should have been included in addition to the 183 days accorded by the Director, for a total B Delay of 310 days. Patentees respectfully submit that the Office's calculation of "B Delay" is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 310 days.

Overlap of "A Delay" and "B Delay"

As detailed above, 510 days of "A Delay" accumulated during the following period:

December 22, 2004, to May 25, 2006.

As detailed above, 310 days of "B Delay" accumulated during the following periods:

October 22, 2006, to April 23, 2007; and

December 7, 2010, to April 12, 2011.

As such, the periods of "A Delay" and "B Delay" do not overlap (i.e., occur on the same calendar day).

Terminal Disclaimer

This patent is not subject to a terminal disclaimer.

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Conclusion

In consideration of the events described above, Patentees believe the PTA calculation of 292 days is incorrect. As such, Patentees respectfully request reconsideration of the PTA in the following manner:

- 1) Total PTO Delay should be calculated as 830 days (i.e., the sum of 520 days of "A Delay" and 310 days of "B Delay");
- 2) Total Applicant Delay should be calculated as 431 days; and
- 3) Total PTA should be calculated as 399 days.

The \$200 fee required under 37 C.F.R. § 1.18(e) is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any other credits or charges to Deposit Account No. 06-1050, referencing Attorney Docket No. 16113-0328001.

Respectfully submitted,

Date: June 13, 2011

/Xin Ma/

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